

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

KENNETH PRICE AIS # 150784,)
a.k.a. KENNY PRICE,)
Petitioner,)
v.) CASE NO. 2:06-CV-236-WKW [WO]
J. C. GILES, *et al.*,)
Respondents.)

ORDER

On January 28, 2009, the Magistrate Judge filed a Recommendation that the court deny Petitioner Kenneth Price's ("Mr. Price") petition for habeas corpus relief and dismiss this case with prejudice. (Doc. # 31.) Mr. Price filed objections on February 23, 2009, asserting ineffective assistance of counsel resulting in violations of both the Sixth and Fourteenth Amendments to the Constitution. (Doc. # 34.)

Having conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made, *see* 28 U.S.C. § 636(b)(1), the court finds that those objections regarding Sixth Amendment violations and ineffective assistance of counsel simply restate the content of the original petition and that the Magistrate Judge has accurately and thoroughly addressed the reasons for the petition's failure.

It is unclear whether Mr. Price's Fourteenth Amendment claim is independent from his ineffective assistance of counsel claim, but assuming, *arguendo*, that this claim is both viable and independent, the court declines to consider this ground for relief because it was

not raised in the original petition. *See Williams v. McNeil*, __ F.3d __, 2009 WL 311298 *4 (11th Cir.) (holding that a district court, in its discretion, may decline to consider arguments which were not first presented to the magistrate judge). Even if the Fourteenth Amendment claim had been properly presented and exhausted, the unexhausted ineffective assistance of counsel claim required dismissal of the entire petition because “a district court must dismiss habeas petitions containing both unexhausted and exhausted claims,” *Rose v. Lundy*, 455 U.S. 509, 522 (1982).

Accordingly, it is ORDERED that:

1. Mr. Price’s objections (Doc. # 34) are OVERRULED.
2. The Recommendation (Doc. # 31) is ADOPTED.
3. Mr. Price’s petition for habeas corpus relief is DENIED.
4. This case is DISMISSED with prejudice.

An appropriate judgment will be entered.

DONE this 6th day of March, 2009.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE